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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,777	11/12/2003	Terrence W. Schmidt	1934-7-3	7411

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EXAMINER

VASUDEVA, AJAY

ART UNIT	PAPER NUMBER
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3617

MAIL DATE	DELIVERY MODE
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06/18/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/712,777	Applicant(s) SCHMIDT ET AL.	
	Examiner Ajay Vasudeva	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-8, 19-24, 28 and 31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-8, 19-24, 28 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 3-8, 19-24, 28 and 31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

By including a negative limitation “**for performing a specific mission other than providing crew and passengers safe accommodations in the event that the vessel sinks**” (emphasis added) in the newly amended claim 19, Applicant has attempted to claim the invention by excluding what the inventors did not invent rather than distinctly and particularly pointing out what they did invent.

However, it is noted that the original disclosure does not positively recite such negative limitation, and therefore fails to provide basis for the exclusion proviso set forth in the claim. See 2173.05(i): Negative Limitations.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 3-8, 19-24, 28 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by FR 2618121 ('121).

FR '121 shows a vessel [6] with a bay disposed in a frame (figure 1). The bay is operable to receive a mission module [1]. The specific mission of the module is to provide equipment and resources for the accommodation/seating of the crew and/or passengers. The vessel and the module are interconnected at an interface through internal passages (fig. 5a and fig. 5b). The interface is capable of allowing a releasable coupling of the module – and the module's equipment and resources -- with the vessel. A mounting structure [5] is used to releasably hold the mission module in the bay (fig. 1). While the mission module is coupled with the vessel, the module's equipment and resources enable the vessel to perform the specific mission of accommodating/seating the crew and/or the passengers. The vessel is not enabled to perform the specific mission when the module is not coupled with the vessel. The limitation "configured to" has been interpreted to mean "capable of".

Re claim 3-7, the interface is capable of allowing a physically transfer of fuel, water, and electrical power, as well as telecommunication signals between the vessel and the module. Therefore, the interface is considered as operable to facilitate the exchange of fuel, water etc. between the frame and the module.

Re claim 8, the rudder is considered to be a foil (figures 1 and 7b). As such, the vessel has a foil-assisted hull.

The limitation "mission module is configured to" has been interpreted to mean "mission module is capable of". Re claims 20-22, the mission of accommodation/seating of the crew and/or passengers can be considered to be a special operation mission.

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Re claim 23, the module includes an antenna (fig. 4a).

Re claim 24, the deck structure shown in fig. 1 can be considered to be a ramp.

Re claim 31, fig 7a shows a multi hulled vessel.

Re the negative limitation “**for performing a specific mission other than providing crew and passengers safe accommodations in the event that the vessel sinks**” (emphasis added) in claim 19, it is noted that such is a functional limitation. Applicant is reminded that while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. See MPEP 2114. Even when the prior art fails to explicitly disclose limitations recited as functional language, if the prior art (i) discloses all claimed structural limitations and (ii) the disclosed structure is capable of performing the recited function, the prior art meets the requirements of the claim. (*See In re Swinehart*, 169 USPQ 226 (CCPA 1971); *In re Schreiber*, 44 USPQ2d 1429). In the present case, while the specific mission of the module has been disclosed as providing accommodation for the crew and the passengers, Applicant may note that such the module is capable of providing other functions, such as a safe storage of sensitive equipment, weapons and ammunition. Specifically, the floor, walls and the seating structures of the module are capable of keeping the weapons and ammunition from become wet, and therefore can be considered as performing the specific mission of keeping the weapons and ammunition dry.

Response to Arguments

5. Applicant's arguments filed 2/29/2008 with respect to claims 3-8, 19-24, 28 and 31 have been considered but they are not persuasive.

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Applicant's Arguments: Applicant has argued that FR '121 fails to disclose a mission module that contains specialized equipment for performing a specific mission other than providing crew and passengers safe accommodations in the event that the vessel sinks.

Response: It is first noted that the original disclosure does not positively recite the negative limitation set forth in claim 19, and therefore fails to provide basis for the exclusion proviso set forth in the claim (see ¶2 of this Office action).

Further, Applicant is reminded that while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. See MPEP 2114. Even when the prior art fails to explicitly disclose limitations recited as functional language, if the prior art (i) discloses all claimed structural limitations and (ii) the disclosed structure is capable of performing the recited function, the prior art meets the requirements of the claim. (*See In re Swinehart*, 169 USPQ 226 (CCPA 1971); *In re Schreiber*, 44 USPQ2d 1429). In the present case, while the specific mission of the module has been disclosed as providing accommodation for the crew and the passengers, Applicant may note that such the module is capable of providing other functions, such as a safe storage of sensitive equipment, weapons and ammunition. Specifically, the floor, walls and the seating structures of the module are capable of keeping the weapons and ammunition from become wet, and therefore can be considered as performing the specific mission of keeping the weapons and ammunition dry (see ¶4 of this Office action).

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay Vasudeva whose telephone number is (571) 272-6689. The examiner can normally be reached on Monday-Friday 12:00 -- 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano can be reached on (571) 272-6684.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Ajay Vasudeva/
Primary Examiner
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